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secure for the trial because of affiants' desire not to get mixed up in the suit.

[Ed. Note.—For other cases, see Equity, Cent. Dig. §§ 1091-1094; Dec. Dig. § 447.* 2 Va.-W. Va. Enc. Dig. 393.]

2. Equity (§ 459*)—Bill of Review—Injunction—Effect.—Where a bill of review is filed to review a decree on the ground of newly discovered evidence, and a decree granting an injunction is entered thereon, all the issues in the original suit are set aside and left undetermined to await final action on the bill of review, and cannot be pleaded as *res judicata*.

[Ed. Note.—For other cases, see Equity, Dec. Dig. § 459.*]

Appeal from Circuit Court, Russell County.

Suit by one Gent and another against W. H. Sutherland and others. From an order refusing to dissolve plaintiffs' injunction on the hearing of the bill of review, defendants appeal. Affirmed.

W. W. Bird, for appellants.

Finney & Wilson, for appellees.

KREBS' EX'RS *v.* WELCH'S ADM'R.

Nov. 17, 1910.

[69 S. E. 346.]

1. Covenants (§ 118*)—Warranty of Title—Breach—Right to Sue—Evidence.—In an action for breach of a covenant of warranty in a deed, plaintiff must establish by proof that he was the grantee, or assignee of the grantee, or of those claiming under him.

[Ed. Note.—For other cases, see Covenants, Cent. Dig. § 213; Dec. Dig. § 118.* 3 Va.-W. Va. Enc. Dig. 771.]

2. Evidence (§ 383*)—Judicial Proceedings—Complete Record.—To make a judgment or decree, without any other portion of the record, competent and sufficient evidence of a fact, it must satisfactorily establish the fact it is offered to prove.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 383.* 11 Va.-W. Va. Enc. Dig. 703.]

3. Judgment (§ 682*)—Conclusiveness—Against Persons Not Parties—Former Vendor.—Defendants' testator conveyed Texas land to C. by warranty deed. C. died, and his heirs conveyed the land to claimant, who later instituted suit against them to recover the land, in which he obtained a judgment vesting the title in him. Thereafter a part of the land was recovered from claimant in trespass to try title by the heirs of B., whereupon claimant instituted proceedings

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

to recover an abatement of the price and costs on the warranty in the original deed of testator to C. Held, that the judgment recovered by claimant against C.'s heirs was unavailable in the action on the warranty to prove that the defendants in the former action were the heirs of C. or that they had acquired C.'s interest and rights under the testator's deed.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1203-1205; Dec. Dig. § 682.* 6 Va.-W. Va. Enc. Dig. 311.]

Appeal from Circuit Court, Frederick County.

Petition by T. D. Welch against the executors of Isaac Krebs, deceased, to establish a claim against the estate. Welch having died pending the suit, his administrator filed an amended petition. From a decree allowing the claim, the executors appeal. Reversed.

SOUTHERN BELL TELEPHONE & TELEGRAPH CO. v.
TOWN OF HARRISONBURG.

Nov. 17, 1910.

[69 S. E. 348.]

Licenses (§ 18*)—Occupation Tax—Ordinances.—A telephone company having no franchise from a town, owning no property, and doing no business within the town, and only making telephone connections outside of the town with an independent corporation having a license from the town to do a telephone business and paying taxes on all its property within the town, is not subject to a license tax imposed by an ordinance of the town on telephone companies for the privilege of carrying on business between the town and other points in the state.

[Ed. Note.—For other cases, see Licenses, Dec. Dig. § 18.* 9 Va.-W. Va. Enc. Dig. 310.]

Error to Circuit Court, Rockingham County.

The Southern Bell Telephone & Telegraph Company was fined by the mayor of the Town of Harrisonburg for doing business without a license, and there was a judgment of the circuit court affirming the judgment of the mayor, and it brings error. Reversed.

H. E. W. Palmer, Brutus J. Clay, R. S. Ker, and Timberlake & Nelson, for plaintiff in error.

H. W. Bertram, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.